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7 UNITED STATES DISTRICT COURT
8 DISTRICT OF NEVADA

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10 HENRY LEE FOGGY, Case No. 3:12-cv-00672-MMD-VPC
11 Petitioner, ORDER
12 v.
13 ISIDRO BACA, Warden,
14 Respondent.

16 Petitioner Henry Foggy's second and successive petition was dismissed without
17 prejudice on those grounds. Dkt. no. 5. Petitioner now moves the Court to reconsider
18 the dismissal, contending that the issuance of an amended judgment of conviction
19 rendered his original judgment void and a nullity. Dkt. no. 8. Respondents have
20 appeared but were not required to respond to the petition. They have not responded to
21 the motion for reconsideration. Petitioner cites to no authority which would authorize his
22 motion or require the Court to reconsider its decision.

23 The Federal Rules of Civil Procedure are applicable to habeas corpus
24 proceedings. Fed.R.Civ.P. 81(a)(2). Fed.R.Civ.P. 60(b) governs the reconsideration of
25 final orders. That rule permits the Court to relieve a party from a final order or judgment
26 on grounds of: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly
27 discovered evidence which by due diligence could not have been discovered in time to
28 move for a new trial under Rule 59(b), (3) fraud ... of an adverse party, ... or (6) any

1 other reason justifying relief from the operation of the judgment. Motions to reconsider
2 are committed to the discretion of the trial court. *Combs v. Nick Garin Trucking*, 825
3 F.2d 437, 441 (D.C.Cir. 1987); *Rodgers v. Watt*, 722 F.2d 456, 460 (9th Cir. 1983) (en
4 banc). To succeed, a party must set forth facts or law of a strongly convincing nature to
5 induce the court to reverse its prior decision. *See, e.g., Kern-Tulare Water Dist. v. City*
6 *of Bakersfield*, 634 F.Supp. 656, 665 (E.D.Cal. 1986), aff'd in part and rev'd in part on
7 other grounds, 828 F.2d 514 (9th Cir. 1987).

8 Petitioner has not demonstrated with facts or law that he is entitled to a second
9 habeas review of his 1996 conviction merely because the state court amended his
10 judgment of conviction to correct a clerical error – the omission of a statement as to
11 petitioner's parole eligibility. The Court will not reconsider the previous dismissal of this
12 petition, which was without prejudice. Petitioner may seek leave to file the successive
13 petition from the Ninth Circuit Court of Appeals, as he was previously advised by this
14 Court.

15 IT IS THEREFORE ORDERED that the Motion for Reconsideration (dkt. no. 8) is
16 DENIED.

17 DATED THIS 29th day of May 2013.

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MIRANDA M. DU
UNITED STATES DISTRICT JUDGE